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File No. O. Home Guard 49

Legal Deptt.

A **BRANCH**

Subject:— Opinions under the Bombay Home Guards Act, 1947

(P.S.)/

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MRP.
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L.D.R.I.No.15066
dated 7-11-1948.

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3. In para.3 of his letter the Commandant of Home Guards suggests that powers such as imposition of fines should be given to the Commandants whereby they can maintain discipline among the ranks and also secure regular attendance of the Home Guards at parades. H.M.(Home) in his marginal note at p.21 ante agrees with his view that the Commandant should have power to fine or punish otherwise, a H.G. for irregularity. The R.L.A. has been requested to advise whether any amendment of the Home Guards Act, 1947 will be necessary or whether the object in view can be achieved by issue of executive instructions.

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MRP.
14/6/56.

Office of the R.L.A.

The Bombay Home Guards Act, 1947.

It will be necessary to amend the Bombay Home Guards Act, 1947, for the purpose in view (cf. section 29(1) of the Bombay District Police Act, 1890).

Sd. P.M.Lad
26/1
Remembrancer of Legal Affairs.

U.R.to H.D.,No.962, dated the 26th January 1959.

MRP.
14/6/56.

Office of the R.L.A.

Section 2 of the Bombay Home Guards Act, 1947 (Bom.III of 1947) provides for the constitution of Home Guards and says that the members of the body called the Home Guards "shall discharge such functions in relation to the protection of persons, the security of property and the public safety as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder." Section 4 provides for the calling out of the Home Guards for training or to discharge the functions as aforesaid. Under section 8 the Provincial Government can make rules consistent with the Act -

(c) regulating inter alia the functions of the Home Guards, and

(e) generally for giving effect to the provisions of the Act.

Rule 8 is the relevant rule in this connection and sub-rule (1) of that rule says that the functions of the members of the Home Guards shall ordinarily consist of -

(a) guarding public buildings,

(b) patrolling for the prevention of crime, and the enforcement of such regulations and orders made under the City of Bombay Police Act, 1902, in Greater Bombay, or the Bombay District Police Act, 1890, elsewhere, or any other law for the time being in force as it would be the duty of a Police Officer to enforce under the said Acts or law, and

(c) assisting the ordinary police force in its other duties.

The instructions given in G.R.,H.D. No.5090/5 dated the 24th December 1948 are:

> "The duties that the Home Guards will be called upon to perform so far as the Prohibition work is concerned will be as follows:-
>
> (a) to carry on propaganda for prohibition; (b) to collect information regarding Prohibition offences and to pass it on to the proper authorities;and (c) take action against Prohibition offenders."

The Commissioner of Police thinks that the powers and privileges and protection of a police officer which the Home Guards enjoy when called on duty can only be exercised and claimed with reference to the duties mentioned in section 2(1) and that as taking action against a prohibition offender while on duty is not one of the functions of Home Guards mentioned in section 2(1), if a Home Guard purports to act according to paragraph 2(1)(c) of the Resolution quoted above, his action will not be covered by law and all the consequences of an illegal arrest will follow. The R.L.A. is requested to advise.

2. The view taken by the Commissioner of Police is not correct. Section 2(1) definitely contemplates that the Home Guards should be invested with functions in relation to the protection of persons, the security of property and in particular the public safety. It is in reference to this part of section 2(1) that the rule has been made assigning to the Home Guards the

the functions of patrolling for the prevention of crime and assisting the police in their other duties. It may be that every crime known to law does not strictly or in a narrow view affect public safety or the protection of persons or the security of property. But it can be said in general that, broadly speaking, prevention of crime is intimately connected with public safety and that public safety in no small measure depends on the prevention of crime and the discharge of their duties by the Police. Rule 8 is thus intra vires, and the word "crime" in that rule would include any crime, including a prohibition crime. Once it is conceded that patrolling for the prevention of crime is a legitimate duty of the Home Guards, it would follow that in discharging that duty they would have all the powers under section 5 which a police officer would have had, had he been placed on patrol duty for the prevention of crime. It goes without saying that such police officer would have the power of arrest, subject to the conditions laid down by the statute which created the offence. Therefore, the Home Guards, when called on duty under section 4, would have the same powers of arrest, etc., for the purpose of preventing prohibition offences as police officers would have. Besides, they would be justified in assisting the ordinary police also in the discharge of their duties in connection with prohibition offences. The expression "taking action against prohibition offenders" in paragraph 2(1)(c) of the G.R. should be construed in this sense.

Sd. P.M.Lad
17/5
Remembrancer of Legal Affairs.

U.R.to H.D.,No.5510, dated the 18th May 1949.

MRP.
14/6/56.

Office of the R.L.A.

The view taken by the H.D. in its note dated 10-9-1949 is not correct.

2. There is no legal bar to a member of the Home Department Guards contesting the election to a Local Board or Municipality if Government permits him to do so.

3. In the case, however, of election to a village panchayat or Provincial Legislature, there is legal incapacity imposed upon a member of the Home Guards by section 8(j) of the Bombay Village Panchayats Act, 1933, and section 69(1) of the Government of India Act, 1935, respectively by reason of the fact that he is a servant of the Crown and holds an office of profit under the Crown. A Home Guard is entitled to a duty allowance under rule9 of the Bombay Home Guards Rules when he is called out for duty, and his office would be deemed to be an office of profit within the meaning of section 69(1) of the Government of India Act, 1935, and would incapacitate him from standing as a candidate for the election. Mere permission of Government would not cure this legal incapacity under both the Acts. The only feasible course is to amend the Bombay Home Guards Act, 1947, providing that

a member

a member of the Home Guards shall not be deemed to be a servant of the Crown for the purposes of clause (j) of section 8 of the Bombay Village Panchayats Act, 1933, and that he shall not be disqualified for being chosen as or for being a member of the Bombay Provincial Legislature merely by reason of the fact that he is a member of the Home Guards.

4. A copy of this opinion is also sent to H. & L.G.D. as there is a proposal to amend the Bombay Village Panchayats Act to enable a Home Guard to become a member of a panchayat.

Sd. P.M.Lad
17/11
Remembrancer of Legal Affairs.

U.R.to H.D.,No.13185, dated the 19th November 1949

Copy to:

Health and Local Government Department.

MRP.
14/6/56.